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IN THE
COURT OF APPEALS OF INDIANA

LONZELL MOBLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0611-CR-638
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Judge
Cause Nos. 49G04-0607-FD-123035 and 49G04-0605-FC-89392

May 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Lonzell Mobley pleaded guilty to Battery Causing Serious Bodily Injury,[1] a class C felony, and Possession of Cocaine,[2] as a class C felony. The trial court subsequently sentenced him to four years in prison on the battery conviction and a consecutive term of two years suspended to probation on the possession conviction. On appeal, Mobley argues the four-year executed sentence imposed for the battery is inappropriate in light of his guilty plea and expression of remorse to the victim.

We affirm.

On May 18, 2006, the State charged Mobley, in cause number 49G04-0605-FC-089392 (the drug case), with possession of cocaine, as a class C felony, and dealing marijuana, a class A misdemeanor. In a separated case, cause number 49G04-0607-FD-123035 (the battery case), the State charged Mobley with five counts, which were subsequently amended on July 17, 2006, to the following: I) Battery causing serious bodily injury, a class C felony; II) criminal confinement, a class D felony; III) domestic battery, a class A misdemeanor; IV) battery, a class A misdemeanor; and V) interference with reporting crime, a class A misdemeanor.

Thereafter, on September 20, 2006, Mobley entered into a plea agreement with the State, which addressed both the drug case and the battery case. With respect to the drug case, Mobley agreed to plead guilty to possession of cocaine. In the battery case, Mobley agreed to plead guilty to one of the five charges, battery causing serious bodily injury. In exchange for these guilty pleas, the State agreed to dismiss the remaining counts in both

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[1] Ind. Code Ann. § 35-42-2-1(a)(3) (West, PREMISE through 2006 2nd Regular Sess.).

[2] Ind. Code Ann. § 35-48-4-6 (West, PREMISE through 2006 2nd Regular Sess.).

cases. The State also agreed to recommend the following aggregate sentence: "SIX (6) YEAR SENTENCE: CAP OF FOUR (4) YEARS EXECUTED, OPEN TO ARGUMENT ON PLACEMENT, BALANCE TO BE SERVED ON PROBATION". *Appendix* at 30.

During the factual basis of the guilty plea hearing regarding the battery case, Mobley admitted that in the early morning hours of June 28, 2006, he woke his live-in girlfriend, Jennifer Fentress, by lifting the mattress on which she was sleeping, causing her to fall onto the floor. Mobley then got on top of Fentress and struck her two or three times in the face. Fentress attempted to escape into the bathroom to call 911, but Moberly grabbed her by the throat and choked her until she lost consciousness. Fentress later awoke on the bathroom floor. With respect to the drug case, Mobley admitted that, on May 17, 2006, he knowingly possessed more than three grams of cocaine. The trial court accepted the proposed plea agreement.

At the sentencing hearing on October 3, 2006, the trial court sentenced Mobley to the advisory sentence of four years in prison for the battery conviction and the minimum sentence of two years fully suspended to probation for the drug conviction, consecutive to the battery sentence.[3] The trial court found three mitigating circumstances, specifically Mobley's substance abuse problem, his acceptance of responsibility through his guilty plea, and the undue hardship place on his minor child. The court found that Mobley's

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[3] Ind. Code Ann. § 35-50-2-6 (West, PREMISE through 2006 2nd Regular Sess.) provides in relevant part: "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years."

criminal history was neither mitigating nor aggravating. The court then noted aggravating factors particular to the battery conviction, including the nature and circumstances of the crime[4] and the affect on the victim, who was reduced to homelessness as a result of the attack. Therefore, with respect to the battery conviction, the court sentenced Mobley to the advisory sentence of four years in prison. He now appeals that sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

On appeal, Mobley argues the advisory sentence imposed for his battery conviction is inappropriate. In this regard, he claims the trial court failed to give sufficient weight to his acceptance of responsibility through his guilty plea and his lengthy apology to the victim.

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[4] In this regard, the trial court noted, "Mr. Mobley, frankly, is fortunate that the injuries peaked where they were, otherwise, he would be facing a considerably longer sentence. This very easily could have been a B, possibly an A felony, Mr. Mobley." *Transcript* at 27-28.

With respect to the apology, Mobley is correct that the trial court appeared to largely disregard his statement of apology as lacking sincerity.[5] "Remorse, or lack thereof, by a defendant often is something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility." *Gibson v. State*, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006); *see also Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002) ("[w]ithout evidence of some impermissible consideration by the court, we accept its determination of credibility"). We, therefore, will not reweigh the trial court's credibility determination in this regard.

Turning to the guilty plea, it is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). While a trial court should make some acknowledgment of a guilty plea when sentencing a defendant, the extent to which a guilty plea is mitigating will vary from case to case. *See Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). As has been frequently observed, "a plea is not necessarily a significant mitigating factor." *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea

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[5] The court specifically stated:

> Mr. Mobley, different judicial officers will hear things differently. When I hear a defendant allocate and the defendant repeatedly uses the first person, I'm left with the conclusion that what I'm hearing is what the Defendant thinks I want to hear. When a defendant sits in from of me and makes statements like "I have to learn to love myself. I need to get on with my life and better myself," I don't hear true remorse. I hear someone who is self-possessed, focused more on his subjective needs and desires, and someone who has not really taken account of the impact of the crimes committed.

Transcript at 26.

or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*. Here, Mobley clearly received substantial benefits in return for his guilty plea. Not only was his aggregate executed sentence capped at four years, but the State also agreed to dismiss several other charges that had been filed against him. Under these circumstances, while the guilty plea constituted a mitigating circumstance, as found by the trial court, it was not entitled to great weight.

Given our discussion above, we find Mobley has failed to establish that the advisory sentence imposed for the battery conviction is inappropriate in light of the nature of the offense and Mobley's character.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.